



## **POLICIES AND PROCEDURES NEW JERSEY PRIMARY CARE OFFICE**

**Date: April 2015**

No.: <b>NJPCO-01</b>	Subject: <b>Fraud, Waste and Abuse</b>
Effective Date: <b>Immediately</b>	Review Date: <b>April 2017</b>

### **I. Purpose**

To identify, remediate and avoid circumstances under which fraud, waste, and abuse occur within the New Jersey Primary Care Office (NJPCO).

### **II. Policy**

1. Consistent with federal and state law, the NJPCO strictly prohibits all acts that constitute fraud, waste, and abuse.
2. Every provider agency under a Letter of Agreement with the NJPCO shall ensure that it complies with NJPCO-01. NJPCO-01 also must be disseminated and made available to the provider agency's employees, managers, contractors and consultants.
3. As used in NJPCO-01, the following words and terms as defined by the Abuse, Fraud, Investigation, Medicaid, Medicaid Fraud Control Unit, and Office are taken from N.J.S.A. § 30:4D-55 - Definitions relative to the Office of the Medicaid Inspector General as indicated:
  - a. "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to Medicaid or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. The term also includes recipient practices that result in unnecessary costs to Medicaid.
  - b. "Claim" means a request for payment related to NJPCO services;
  - c. "Fraud" means an intentional deception or misrepresentation made by any person with the knowledge that the deception could result in some unauthorized benefit to that person or another person, including any act that constitutes fraud under applicable federal or State law;
  - d. "Investigation" means an investigation of fraud, waste, abuse, or illegal acts perpetrated within Medicaid by providers or recipients of Medicaid care, services, and supplies.
  - e. "Knowing" and "knowingly" mean that a person, with respect to information--
    - (i) has actual knowledge of the information;

- (ii) acts in deliberate ignorance of the truth or falsity of the information;
  - (iii) acts in reckless disregard of the truth or falsity of the information; or
  - (iv) it is practically certain from the conduct of the person that a certain result will occur;
- e. "Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).
  - f. "Medicaid Fraud Control Unit" means the Medicaid Fraud Control Unit in the Department of Law and Public Safety.
  - g. "Office" means the Office of the Medicaid Inspector General created by this act.
  - h. "Primary Care Office" means a unit of state government located within the Department of Health to represent the health care needs of underserved populations in New Jersey and the health care professionals who serve them.
  - i. "Participant" means: (1) a child and/or family receiving or attempting to access NJPCO services; (2) a practitioner providing NJPCO services, on behalf of a provider agency, to a child and/or family; (3) an agency operating under a Letter of Agreement or grant to ensure the provision of NJPCO services to children and families on behalf of the NJPCO, including service coordination; and (4) employees and managers working for the Department of Health, within the New Jersey Early Intervention System; and
  - j. "Waste" means activities involving payment or the attempt to obtain reimbursement for items or services where there was no intent to deceive or misrepresent but the outcome of poor or inefficient claiming or inappropriate IFSP development causes unnecessary costs to the NJPCO. Waste includes any action or inaction that does not rise to the level of fraud or abuse, but results in overpayments or misspent funds.
4. Provider agencies, practitioners, NJPCO employees and managers, and as indicated, families must comply with NJPCO-01 and the following federal and state statutes in the delivery of NJPCO services: Federal False Claims Act; Federal Program Fraud Civil Remedies Act, Federal Anti-Kickback statute; Section 6032 of the Federal Deficit Reduction Act of 2005; New Jersey False Claims Act; New Jersey Medical Assistance and Health Services Act; Health Care Claims Fraud Act; Uniform Enforcement Act; New Jersey Consumer Fraud Act; and Conscientious Employee Protection Act.
  5. The Federal False Claims Act (FCA), codified at 31 U.S.C. §§ 3729-3733, is one of the federal government's primary weapons to fight fraud against the government. The Act, as amended in 1986, provides for penalties of between \$5,500 and \$11,000 per false claim, and triple damages for anyone who knowingly submits or causes the submission of false or fraudulent claims to the United States for government funds or property. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula. The Act prohibits, among other things, the submission of inappropriate claims for NJPCO services, since the NJPCO is funded, in part, by federal funds. It also protects "whistleblowers" by providing that any employee who is subject to retaliation or discrimination by an employer in the terms and conditions of employment because the employee lawfully sought to take action or assist in taking action under this act "shall be entitled to all relief necessary to make the employee whole." This includes reinstatement with seniority restored to what it would have been without the retaliation or discrimination, double the amount of back pay, interest on the

back pay, and compensation for any special damages sustained as a result of the employer's actions, including litigation costs and reasonable attorney's fees.

6. The Federal Program Fraud Civil Remedies Act (PFCRA), codified at 31 U.S.C. §§ 3801-3812, provides federal administrative remedies for false claims and statements, including those made to federally funded health care programs. Current civil penalties are \$5,500 for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false claim for which the government makes a payment. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.
7. Under the Federal Anti-Kickback statute (AKA), codified at 42 U.S.C. § 1320a-7b, it is illegal to knowingly and willfully solicit or receive anything of value directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual or...ordering or arranging for any good or service for which payment may be made in whole or in part under a federal health care program, including programs for children and families accessing NJPCO services through New Jersey Medicaid and New Jersey Family Care.
8. Under Section 6032 of the Deficit Reduction Act of 2005 (DRA), codified at 42 U.S.C. § 1396a(a)(68), the NJPCO and participants in the NJPCO shall follow federal and state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs, including programs for children and families accessing NJPCO services through New Jersey Medicaid and New Jersey Family Care.
9. The New Jersey False Claims Act (NJFCA), P.L. 2007, Chapter 265, codified at N.J.S.A. 2A:32C-1 through 2A:32C-17, and amending N.J.S.A. 30:4D-17(e), which was enacted on January 13, 2008 and was effective 60 days after enactment, has three parts: (a) the main part authorizes the New Jersey Attorney General and whistleblowers to initiate false claims litigation similar to what is authorized under the Federal False Claims Act, and has similar whistleblower protections; (b) another part amends the New Jersey Medicaid statute to make violations of the New Jersey False Claims Act give rise to liability under N.J.S.A. 30:4D-17(e); and (c) a third part amends the New Jersey Medicaid statute to increase the \$2000 per false claim civil penalties under N.J.S.A. 30:4D-17(e)(3) to the same level provided for under the Federal False Claims Act, which is currently between \$5,500 and \$11,000 per false claim.
10. Under the provisions of the New Jersey Medicaid Program Integrity and Protection Act (MPIP), codified at N.J.S.A. § 30:4D-53 through 64, participants in the NJPCO shall refrain from engaging in fraud or other criminal violations relating to Title XIX (Medicaid)-funded programs. Prohibited conduct includes, but is not limited to: (a) fraudulent receipt of payments or benefits; (b) false claims, statements or omissions, or conversion of benefits or payments; (c) kickbacks, rebates and bribes; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments. Participants engaging in criminal violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-57.

11. Under the criminal provisions of the New Jersey Medical Assistance and Health Services Act (MAHSA), codified at N.J.S.A. § 30:4D-17(a) – (d), participants in the NJEIS shall refrain from engaging in fraud or other criminal violations relating to Title XIX (Medicaid)-funded programs. Prohibited conduct includes, but is not limited to: (a) fraudulent receipt of payments or benefits; (b) false claims, statements or omissions, or conversion of benefits or payments; (c) kickbacks, rebates and bribes; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments. Participants engaging in criminal violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-17.1(a). Under the civil provisions of the MAHSA, codified at N.J.S.A. §§ 30:4D-7(h) and 30:4D-17(e) – (i), participants in the NJPCO: (1) shall repay with interest any amounts received as a result of unintentional violations; and (2) are liable to pay up to triple damages and (as a result of the New Jersey False Claims Act) between \$5,500 and \$11,000 per false claim when violations of the Medicaid statute are intentional, or when there is a violation of the New Jersey False Claims Act. Participants engaging in civil violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-17.1(a)
12. Under the Health Care Claims Fraud Act (HCCFA), codified at N.J.S.A. §§ 2C:21-4.2, 2C:21-4.3 and 2C:51-5, participants in the NJPCO shall not: (1) knowingly commit health care claims fraud in the course of providing NJPCO services; (2) recklessly commit health care claims fraud in the course of providing NJPCO services; and (3) commit acts of health care claims fraud as described in (1) and (2), if the commission of such acts would be performed by an individual other than the professional who provided NJPCO services (e.g., claims processing staff).
13. Under the Uniform Enforcement Act (UEA), codified at N.J.S.A. § 45:1-21(b) and (o), licensed professionals are prohibited from engaging in conduct that amounts to, “dishonesty, fraud, deception, misrepresentation, false promise or false pretense” or involves false or fraudulent advertising.
14. Under the New Jersey Consumer Fraud Act (CFA), codified at N.J.S.A. §§ 56:8-2, 56:8-3.1, 56:8-13, 56:8-14, and 56:8-15, provider agencies and the individuals working for them shall be prohibited from the unlawful use of “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact”, with the intent that others rely upon it, in connection with the sale, rental or distribution of any product or service by the provider agency or its employees, or with the subsequent performance of that provider agency or its employees.
15. Under the Conscientious Employee Protection Act (CEPA), codified at N.J.S.A. §34:19-1, et seq., provider agencies are prohibited from taking retaliatory action against employees who: (a) disclose or threaten to disclose to a supervisor or any public agency an activity, policy or practice of the provider agency or another business with which the provider agency shares a business relationship, that the employee reasonably believes to be illegal, fraudulent and/or criminal; (b) provides information or testimony to any public agency conducting an investigation, hearing or inquiry into any violation of law, rule or

regulation by the provider agency or another business with which the provider agency shares a business relationship; or (c) objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is illegal, fraudulent, criminal or incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment.

16. No provider agency shall submit a claim that, if processed and reimbursed, would constitute fraud, waste or abuse, consistent with the FCA, PFCRA, AKA, DRA, NJFCA, MPIP, MAHSA, HCCFA or as defined above in subsection II.3.
17. No family shall seek payment of NJPCO services, if payment for said services would constitute fraud, waste or abuse, consistent with the FCA, PFCRA, AKA, DRA, NJFCA, MPIP, MAHSA, HCCFA or as defined above in subsection II.3.
18. Agency shall monitor, verify, and document verbal information gathered from families in accordance with the LOA § IV(2)(c).
19. Cases brought to the attention of the NJPCO may be independently investigated by NJPCO staff or the NJPCO designee, to determine the merits of alleged fraud, waste, or abuse.
20. If a family or provider agency has been adjudged to have committed fraud, waste or abuse, the NJPCO shall impose sanctions, including, but not limited to: (1) recoupment of funds linked to fraud, waste or abuse, together with interest and any applicable civil penalties; (2) suspension of services to a child (whose parents committed fraud, waste, or abuse); (3) disqualification of a practitioner from serving within the NJPCO; (4) termination of the Letter of Agreement between a provider agency and the NJPCO for the provision of early intervention services; and/or (5) referral of any evidence of suspected fraud or other criminal activity to the Office of the Attorney General, NJ Division of Criminal Justice. For matters involving Medicaid the referral is to Medicaid Fraud Section, Office of Insurance Fraud Prosecutor.

### III. Policies and Procedures for Preventing and Detecting Fraud, Waste and Abuse

- A. NJPCO employees and managers must be aware of, comply with, and assist provider agencies to comply with, NJPCO-01, including the policies and procedures outlined in subsection B. below.
- B. Provider agencies under a Letter of Agreement or a grant with the NJPCO must, at a minimum:
  1. Comply with NJPCO-01, including the policies and procedures outlined in this section, and must comply with FCA, PFCRA, AKA, DRA, NJFCA, MPIP, MAHSA, HCCFA, UEA, CFA, and CEPA that prohibit practitioners and other staff from engaging in conduct that would amount to fraud, waste, or abuse.

2. Require staff to attend training related to the prevention and detection of fraud, waste and abuse and maintain documentation of staff attendance including but not limited to date, time and location of the training.
3. Process and review consent authorizations, claims, to avoid fraud, waste and abuse.
4. Upon notification of alleged fraud, waste, or abuse, the provider agency must document the: (a) date; (b) parties involved; (c) sources and bases for the allegations; (d) steps that will be taken to investigate the allegations; (e) the names of individuals who will be interviewed regarding the allegations; (f) the projected timeline for investigation; (g) any findings related to the investigation; (h) agency remedial action taken as a result of findings; and (i) any disciplinary actions imposed upon employees or contractors as a result of findings.
5. Within two (2) business days following notification of allegations involving fraud, waste or abuse, a provider agency must notify the NJPCO of those allegations, detailing the basis of suspicions, the status of any investigation, and the anticipated timeline for determining whether fraud, waste or abuse occurred.
6. Not more than 30 days following the date of receipt of notification of an alleged act of fraud, waste, or abuse, a provider agency must conclude its investigation and submit to the NJPCO its findings.
7. Actions taken by a provider agency, based on allegations of fraud, waste, or abuse shall be articulated in writing to the accused and copied to the NJPCO, and other relevant parties, strictly on a need-to-know basis.
8. Should the NJPCO determine that it intends to investigate a case of alleged fraud, waste, or abuse that is brought to its attention, the relevant parties, including practitioners, provider agencies and staff of the provider agencies shall completely cooperate with the NJPCO in its investigation to ensure that the merits of any allegation are thoroughly and accurately explored.
9. The NJPCO shall conclude its investigation into allegations of fraud, waste or abuse within 60 days of receipt of all documentation related to the allegations and shall issue a report to the accused and copy relevant excerpts to appropriate parties to address any sanctions imposed.
10. Any sanctions imposed by the NJPCO consistent with this policy shall be binding and shall be reviewable, on appeal, by the Grants Appeals Board or the Assistant Commissioner of Family Health Services in the NJ Department of Health.
11. Any evidence of suspected fraud or other criminal activity will be referred to the Office of the Attorney General, NJ Division of Criminal Justice, and evidence of potential Medicaid fraud, waste or abuse will be reported to the Office of Medicaid Inspector General.

12. NJPCO staff and employees of providers agencies who wish to report evidence of fraud, waste, or abuse anonymously and confidentially can do so in the following manner:

- a. Call the toll-free NJ Fraud and Abuse Hotline at 1-888-9FRAUD5 (1-888-937-2835) and report any information about fraud, waste or abuse in Medicaid or NJ FamilyCare. Callers can either speak to the hotline operator, or leave a message if the operator does not answer. Callers do not have to give their name, and may receive a reward if their call leads to a recovery.
- b. Call the toll-free hotline established by the Federal Office of Inspector General in the U.S. Department of Health and Human Services to report any fraud, waste or abuse involving Medicare or any other health care program involving only federal funds. That hotline number is 1-800-HHS-TIPS (1-800-447-8477). For more information about this hotline and about other ways to contact the Office of Inspector General, you can go to <http://oig.hhs.gov/hotline.html>.

#### **IV. Related Policies/Procedures**

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Authorized Signatory/Policy Reviewer

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Date